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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,337	03/18/2004	Michel Valentini	251-IUS	3748
5568	7590	05/02/2006	EXAMINER	
JACK PAAVILA			DEVOTI, PAUL D	
BOX 1151			ART UNIT	
ALEXANDRIA, KOC IA0			PAPER NUMBER	
CANADA			3637	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/802,337	Applicant(s) VALENTINI, MICHEL	
	Examiner Paul Devoti	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,7,8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9 and 11-13 is/are rejected.
- 7) ☒ Claim(s) 2,4,6 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. In response to the amended claims filed by the applicant on March 1, 2006: No claim text shall be presented for any claim in the claim listing with the status of "cancelled" or "not entered" (See 37 CFR 1.121). Therefore, the text in claims 3, 5, 7, 8, and 10 should be removed.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

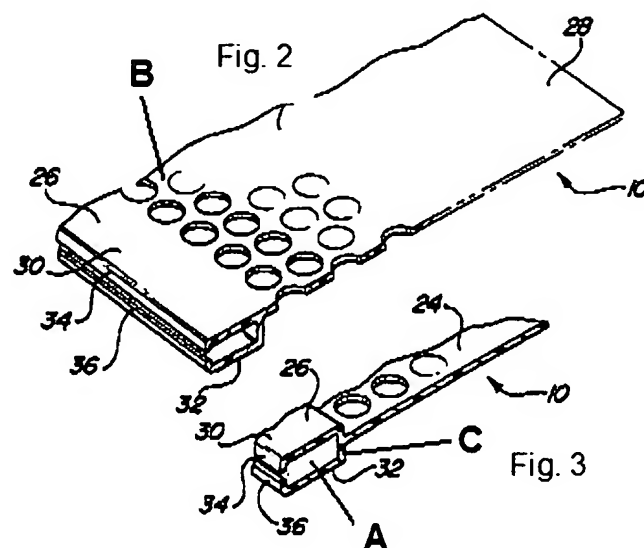
3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers (US 5555680) in view of Herren (US 5566513).

1. Regarding claim 1, Sweers discloses a gutter cover that has an elongated main section (24) with perforations (B), and an outer side section (26). The outer side section has a channel (A) that opens away from the main section (24), which fits over the outer lip (22) of a gutter (12). The channel is defined by a top wall (30), bottom wall (32), and an end wall (C) that joins the top and bottom walls. The end wall (C) and top section (30) of the channel inherently form a gripping surface on the outer side section, that extends upwardly and facing away from the channel opening, to pull the channel over

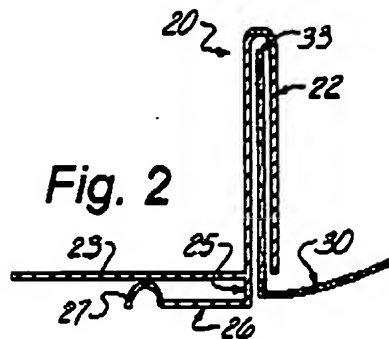
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the outer lip (22) of a gutter (12). Sweers does not disclose the bottom wall of the channel is shorter than the top wall.

2. Herren, however, discloses a gutter guard apparatus with an outer side section having a channel with a bottom wall (26) that is shorter than its top wall (23). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the channel of Sweers' gutter cover to have a bottom wall shorter than the top wall, as taught by Herren to more easily install the gutter guard over the lip of a gutter.



Sweers (US 5555680) Figures 2 and 3



Herren (US 5566513) Figure 2

4. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers (US 5555680) in view of Herren (US 5566513) as applied to claim 1 above, and further in view of Meckstroth (US 6412228).

5. Regarding claim 9, Sweers in view of Herren discloses everything previously mentioned, including the surface of the end wall inherently forms a gripping surface, but does not disclose the bottom wall of the channel is aligned with the panel. Meckstroth, however, discloses a gutter cover with a main section (45, 68, 71) that is aligned with bottom wall (16) of an outwardly facing channel. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Sweers' gutter cover, already modified by Herren, so that the bottom wall of the channel is aligned with the panel, as taught by Meckstroth to provide a better fit of the channel onto a gutter lip.

6. Regarding claim 11, Sweers in view of Herren, and further in view of Meckstroth, discloses everything previously mentioned, including the bottom wall (32) has retaining means (36) on its top surface near its outer end.



7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers (US 5555680) in view of Brochu (US 6427388).
8. Regarding claim 12, Sweers discloses everything previously mentioned including the top wall (30) of the channel aligned with the main panel (24) as seen in Figure 2, but does not teach a support wall extending upwardly from the panel or top wall to provide the gripping surface. Brochu, however, teaches a raised portion of a gutter cover that has an inner and outer vertical wall (Figure 2, Items 52 and 54). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to modify Sweers' gutter cover to include a vertically extending wall, as taught by Brochu

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to provide a gripping surface making it easier to install the gutter cover over the lip of the gutter.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweers (US 5555680) in view of Herren (US 5566513).

10. Regarding claim 13, Sweers in view of Herren discloses everything previously mentioned, including the gutter cover is made of aluminum (column 2, lines 36-37), but does disclose the aluminum is coated with polyester. It would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the gutter cover with polyester, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

***Allowable Subject Matter***

11. Claims 2, 4, 6, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments with respect to claims 1, 9, 11, and 12 have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's arguments, see Page 2, Paragraph 1, filed on March 1, 2006, with respect to claim 2 have been fully considered and are persuasive. The rejection of claim 2 has been withdrawn.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

- a. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733.

The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PD *FD*  
04/28/06

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
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